

November 1, 2013

**VIA ELECTRONIC MAIL (lhm28843@sbcglobal.net) AND U.S. MAIL**

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PO Box 5469  
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**Re: Cold Creek Compost, Inc.  
River Watch's CWA 60-Day Notice of Intent to File Suit**

Dear Ms. Danley:

We have been retained by Cold Creek Compost, Inc. ("Cold Creek") to represent it in its defense of California River Watch's ("CRW") threatened Clean Water Act citizen suit.

Cold Creek disputes CRW's allegations, intends to vigorously defend any lawsuit that CRW files, and will continue to work with local, regional, and state regulators to ensure its compliance with all federal, state and local laws and regulations that apply to its business operations and the permits that it holds. We are anticipating that we will also be able to work with CRW to bring this matter to a close as expeditiously as possible.

Consistent with its mission of supporting sustainable agriculture by providing farmers with an alternative to traditional chemical fertilizers, Cold Creek is on record as working with state regulators to bring consistency and higher standards to the regulation of composting facilities in California; and based upon our preliminary review and analysis of CRW's allegations, we believe that Cold Creek is in compliance with its permits and any federal, state, and local laws and regulations applicable to its composting operation. To the extent that further action is or may be needed on its part, Cold Creek is working with the appropriate agencies to update any required reports, plans, records or submissions and to ensure its continued compliance.

If CRW is aware of specific information or evidence to the contrary, we welcome the opportunity to review and discuss it with you, particularly any information or evidence of any *specific* violations. In spite of CRW's recitation of the notice requirements of 40 C.F.R. § 135.3 in its letter, none of the broad, conclusory allegations and conclusions in the letter constitute information sufficient to notify or inform Cold Creek of the alleged violations, as required by the regulation.

Notwithstanding the insufficiency of CRW's letter, Cold Creek will review and consider any specific information or evidence that CRW believes supports its allegations, and will undertake any remedial measures that are required or appropriate.

Sarah R. Danley, Esq.  
Law Offices of Jack Silver  
November 1, 2013

Page 2

However, inasmuch as CRW is threatening to file a Clean Water Act citizen suit against Cold Creek if it does not meet its demands and inasmuch as the notice is a prerequisite to commencing such an action, we believe that it is important that CRW understands some of the reasons why the notice is insufficient.

Page 1, paragraph 2 of the letter states that CRW is placing Cold Creek on notice that it intends to bring suit against Cold Creek "...for continuing violations of an effluent standard or limitation, permit condition or requirement, or a Federal or State Order or Permit issued pursuant to CWA §§ 301(a) and 402 and in compliance with the Code of Federal Regulations, and the Regional Water Quality Control Board, Region water quality control plan ("Basin Plan") as exemplified by violations of permit conditions or limitations in the state Water Resources Control Board ("State Water Board") Water Quality Order No. 97-03-DWQ National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001 ("General Permit")."

There is no particularity in this statement regarding the nature of the alleged continuing violations or anything that informs Cold Creek of any specific standard, limitation, permit condition or requirement that it is allegedly violating. This statement is merely a paraphrasing of the Clean Water Act notice regulations and a referencing of the General Permit, the Clean Water Act, and a basin plan.

Beginning on page 2, in item 1. of the letter CRW attempts to show that it has complied with the notice requirements of 40 C.F.R. §135.3 by identifying Clean Water Act sections 301(a) and 402 and the General Permit as the specific standards, limitations, or orders alleged to have been violated. Neither Section 301(a) nor Section 402 is a standard, limitation, or order within the meaning of the regulations. Section 301(a) is an "enabling" provision authorizing the promulgation or setting of standards and limitations such as *point source* effluent limitations contained in some individual NPDES permits.<sup>1</sup> Section 402 *establishes* the NPDES program to regulate *point source* discharges and contains no specific standards or limitations, and although standards and limitations may be contained in a General Permit, the permit itself is not the standard or limitation.

In item 2. (The activity alleged to constitute a violation.), CRW states that it "...has set forth narratives in this Notice describing with particularity the activities leading to violations and has incorporated by reference Cold Creek Compost's own records, and other public documents in the[sic] Cold Creek Compost's possession or otherwise available to Cold Creek Compost regarding the General Permit, compliance with the General Permit, and any other information designed to inform Cold Creek Compost or the public."

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<sup>1</sup> According to US-EPA, in lay terms, Section 301(a) requires that *point source* discharges of pollutants to the waters of the United States have an NPDES permit. See [www.epa.gov/region6/gen/w/301.htm](http://www.epa.gov/region6/gen/w/301.htm).



Sarah R. Danley, Esq.  
Law Offices of Jack Silver  
November 1, 2013

Page 3

The so-called narratives contain misstatements of fact and are at best conclusory. Instead of describing any alleged violation with particularity, CRW references and incorporates records and documents allegedly containing evidence of the violations. What CRW is telling Cold Creek is that in order for it to identify the specific standard, limitation, or order alleged to have been violated, it must search what we know is more than 5000 pages of North Coast Regional Water Quality Control Board (the "Regional Board") documents, its own records, and any other public documents available to it. This is not sufficient information to permit Cold Creek to identify any *specific* standard or limitation alleged to have been violated or to otherwise determine why CRW is threatening to sue it. The burden is on CRW to provide Cold Creek with sufficient specific information to permit Cold Creek to identify the specific standard, limitation or order that it is allegedly violating. Cold Creek is not required to undertake a burdensome document search to identify what CRW believes is a violation. This is virtually an impossible task.

Although it is unknown when the alleged observations of the activities and conditions described in CRW's "narrative" were made, Cold Creek is not aware of any regulated activity, structure, facility or storage of material that is not in compliance. If CRW is aware of information or evidence to the contrary or can associate an alleged activity or condition at the site with a specific standard, limitation or order, please share it with us and as we will again state, Cold Creek will review the evidence and immediately undertake any required remedial measures.

Further, the Clean Water Act notice requirements, as referenced in item 5. on page 3 of your letter, require the notice to contain "the date or dates of such violation" - not a 5-year range of dates that are not associated with any specific violation or activity. Which specific violations occurred on which of the approximately 1,825 days of alleged violations?

As previously stated, notwithstanding the insufficiency of CRW's 60-day notice, and our belief that the allegations of violation and non-compliance contained in the notice are unfounded, we are willing to review and discuss any specific information or evidence that CRW is aware of or possesses that it believes support its allegations. After review and consideration of this information or evidence, Cold Creek will work with the regulatory agencies in undertaking any required remedial measure.

To the extent that the remedial measures requested by CRW are consistent with remedial measures required by applicable law or regulation, Cold Creek has either undertaken such measures or will do so, and is willing to discuss any such measures with CRW. We believe that Cold Creek's preliminary responses to CRW's requested remedial measures provide a good starting point for these discussions. For ease of reading, we have restated the Remedial Measures Requested followed by Cold Creek's responses.

1. *Elimination of all non-storm water discharges from the composting facility in compliance with the General Permit, or application for an*

Sarah R. Danley, Esq.  
Law Offices of Jack Silver  
November 1, 2013

Page 4

*individual NPDES permit which allows these discharges.*

Response: Cold Creek presently operates within the requirements of the General Permit, which at Section A.6.v. (page 16) provides:

Facility operators shall investigate the facility to identify all non-storm water discharges and their sources. As part of this investigation, all drains (inlets and outlets) shall be evaluated to identify whether they connect to the storm drain system.

All non-storm water discharges shall be described. This shall include the source, quantity, frequency, and characteristics of the non-storm water discharges and associated drainage area.

Non-storm water discharges that contain significant quantities of pollutants or that do not meet the conditions provided in Special Conditions D. are prohibited by this General Permit (Examples of prohibited non-storm water discharges are contact and non-contact cooling water, boiler blowdown, rinse water, wash water, etc.).

Non-storm water discharges that meet the conditions provided in Special Condition D. are authorized by this General Permit. The SWPPP must include BMPs to prevent or reduce contact of non-storm water discharges with significant materials or equipment.

Non-storm water discharge is captured and runs via the drainage system into a retention pond. Cold Creek is not aware of any ongoing non-storm water discharge. If there is an ongoing violation of the General Permit, please provide specific information or evidence of any such violation. Upon receipt of this information or evidence, Cold Creek will immediately implement any required remedial measures.

2. *Preparation and implementation of an updated SWPPP consistent with the requirements of the General Permit. The SWPPP shall, in addition to other provisions, include the following:*

- a. *Provisions ensuring the SWPPP conforms to applicable provisions contained in (i) Stormwater Best Management Practice Handbook, California Stormwater Quality Association January 2003, (ii) BMPs detailed in the EPA's "Industrial Stormwater Fact Sheet Series"*



Sarah R. Danley, Esq.  
Law Offices of Jack Silver  
November 1, 2013  
Page 5

*(EPA Office of Water, EPA-833-F-06-033, Dec. 2006; [www.epa.gov/npdes/pubs/](http://www.epa.gov/npdes/pubs/));*

- b. An aerial map with a detailed overlay of the site with notes, legends, and other data as appropriate to ensure the site map is clear and understandable and includes the following information, as applicable: boundaries; outline of all stormwater drainage areas; portions of the drainage area impacted by run-on from surrounding areas; direction of flow of each drainage area; nearby water bodies; stormwater collection and conveyance system, associated points of discharge, and flow direction; structural control measures that affect stormwater discharges; locations of all catch basins; outline of all impervious areas; locations where materials are directly exposed to precipitation; locations where significant spills or leaks have occurred in the last five (5) years; areas of industrial activities; monitoring locations; and the location of key surface facilities, including building and or activities that may be sources of non-stormwater discharges to the stormwater system;*
- c. A narrative description of the information in the site map and the operation of the facility's industrial activities.*
- d. Collection of a minimum of two wet weather rain events samples (qualifying or not) from all discharging outfalls on the site, the analysis of those samples for: pH, total suspended solids (TSS), specific conductance (SC), total organic carbon (TOC) or oil and Grease (O&G), aluminum (Al), iron (Fe), lead (Pb), copper (Cu), mercury (Hg), and Zinc (Zn) using 40 CFR Part 136 analytical methods, and for total petroleum hydrocarbons and diesel (TPHg and TPHd), as well as provisions identifying BMP's to reduce these pollutants in any discharges that exceed the California Toxic Rule (CTR) limits or EPA Benchmarks to below CTR limits or EPA Benchmarks.*

Sarah R. Danley, Esq.  
Law Offices of Jack Silver  
November 1, 2013

Page 6

Response: The SWPPP is being updated. The present version on file with the Regional Board meets the requirements of the General Permit and those items listed in 2(a)-(d) above, where applicable to Cold Creek's operations. The SWPPP contains the BMPs required by the General Permit (see Section A.8. ). The guidance and recommendations of the *Stormwater Best Management Practice Handbook*, and EPA's *Industrial Stormwater Fact Sheet Series* are being reviewed for inclusion and incorporation in the updated SWPPP where applicable.

With respect to the sector within which Cold Creek's SIC is categorized, Cold Creek will incorporate the BMPs relevant to its facility. Specifically, for SIC 2875 (Fertilizers Mixing Only), which falls in Sector C of US-EPA's *Industrial Stormwater Fact Sheet Series*, Cold Creek's SWPPP will include the relevant BMPs.

With respect to the SWPPP's conformity with EPA's *Industrial Fact Sheet Series*, please provide us with a list of the specific BMPs that CRW believes are applicable to Cold Creek's facility, and their relevance to Cold Creek's operations will be considered.

The SWPPP meets the requirements for maps as set forth in the General Permit at Section A.4. Those requirements do not include an aerial map. The maps included in the SWPPP contain clear and understandable information applicable to Cold Creek's operations.

A narrative description of Cold Creek's operations is contained in the SWPPP. The General Permit does not require a narrative description of the information on the site map (see General Permit, Section A.4., which provides in part, "[t]he SWPPP shall include a site map. The site map shall be provided on an 8-1/2 x 11 inch or larger sheet and include notes, legends, and other data as appropriate to ensure that the site map is clear and understandable."). The maps included in Cold Creek's SWPPP meet this requirement.

Cold Creek has no "discharging outfalls." Its SWPPP contains all General Permit requirements for wet-weather-rain-event sampling and analysis and Cold Creek complies with these requirements

3. *Provision of a copy of the updated SWPPP to CRW for review within sixty (60) days after preparation.*

Response: Cold Creek will provide River Watch with an electronic copy of the updated SWPPP upon its completion.

4. *Implementation of specific BMPs for:*
  - a. *Good housekeeping – keeping the facility clean and orderly;*
  - b. *Storing material on paved, graded surfaces with overhead*



Sarah R. Danley, Esq.  
Law Offices of Jack Silver  
November 1, 2013

Page 7

*covering;*

- c. Training employees in stormwater control management;*
- d. Erosion control measures such as sandbags or silt screens;*
- e. Listing all significant material including their quantity and location;*
- f. Listing of all potential pollutant sources;*
- g. Construction and maintenance of a retention pond large enough to prevent all non-stormwater runoff from reaching nearby surface waters and groundwater;*
- h. Proper berming of the entire site to prevent non-stormwater runoff from reaching nearby surface waters; and,*
- i. Treatment of all non-stormwater before it leaves the site.*

Response: The General Permit, Section A.8. sets forth the requirement for BMPs, which requirements are contained in Cold Creek's SWPPP. With respect to the specific BMPs that you reference:

- a. Good housekeeping – keeping the facility clean and orderly.* The facility is clean and orderly. There is no present violation or area of concern relating to this issue.
- b. Storing material on paved, graded surfaces with overhead covering.* Cold Creek operates within the requirements of its permits. The General Permit does not require material to be stored on a paved surface. Some material is stored under overhead covering. Other material is not. The material that is not stored with overhead covering is not required to be covered. If there is a present notice of violation or area of concern on this issue please bring this to Cold Creek's immediate attention.
- c. Training employees in storm water control management.* Training is performed pursuant to the General Permit requirements and applicable BMPs.

Sarah R. Danley, Esq.  
Law Offices of Jack Silver  
November 1, 2013

Page 8

- d. *Erosion control measures such as sandbags or silt screens.* Not applicable to this site.
- e. *Listing [sic] all significant materials including their quantity and location.* This BMP is performed pursuant to the applicable General Permit requirements.
- f. *Listing of all potential pollutant sources.* This BMP is performed pursuant to the applicable General Permit requirements.
- g. *Construction and maintenance of a retention pond large enough to prevent all non-storm water runoff from reaching nearby surface waters and groundwater.* Cold Creek has a retention pond. It is not aware of any ongoing violation of the Clean Water Act, or that any runoff is reaching nearby surface waters and groundwater. Cold Creek is in compliance with the General Permit requirements, and there is no current or past testing indicating any runoff from Cold Creek's operations or that any alleged runoff violates the Clean Water Act by reaching nearby surface water or groundwater. If CRW has or is aware of any evidence of any Clean Water Act violation by Cold Creek's operations, provide that evidence to Cold Creek and it will immediately investigate it and implement proper remedial action.<sup>2</sup>
- h. *Proper berming of the entire site to prevent non-storm water runoff from reaching nearby surface waters.* The facility is bermed. Cold Creek is not aware of any ongoing violation with respect to berming or that any runoff is reaching nearby surface waters. Cold Creek is also in compliance with the General Permit requirements in this regard. Again, if CRW has or is aware of evidence to the contrary, please provide it, and Cold Creek will immediately investigate it and implement any required remedial action.
- i. *Treatment of all non-storm water before it leaves the site.* Cold Creek is not aware of any non-stormwater that leaves the site. Evidence of

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<sup>2</sup> The General Permit does not require a retention pond. A retention pond is one of five structural BMPs that should be considered (see Section A.8.b.ii.). Cold Creek considered and constructed a retention pond, and the pond complies with the General Permit.



Sarah R. Danley, Esq.  
Law Offices of Jack Silver  
November 1, 2013  
Page 9

any such non-stormwater runoff will be investigated and appropriate remedial action taken.

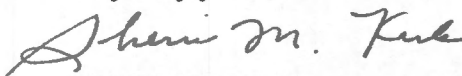
5. *Provision to CRW with a digital copy of any reports (e.g. monitoring reports) concerning matters addressed herein, to the extent that annual or other monitoring reports are not otherwise uploaded to and made available to the RWQCB's storm water data base.*

Response: In accordance with the General Permit and any other regulatory requirements, Cold Creek will submit all reports to the Regional Board and other regulatory agencies, as required. Annual and other monitoring reports submitted to the Regional Board and other regulatory agencies are public records that are available to CRW.

We look forward to speaking with you regarding this matter. We are optimistic that the filing of a lawsuit will not be necessary, and that we can work with CRW and the involved regulatory agencies to ensure Cold Creek's continuing compliance with all federal, state and local laws and regulations that apply to its business operations and the permits that it holds.

You may reach me by telephone at (916) 438-6932 or by email at [saclaw@sbcglobal.net](mailto:saclaw@sbcglobal.net).

Very truly yours,



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Sarah R. Danley, Esq.  
Law Offices of Jack Silver  
November 1, 2013

Page 10

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